IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Jaipur Development Authority, Jaipur V/S Chhote Lal

S.B. Civil Regular First Appeal No.180/87 against the judgment and decree dated 22.7.87 passed by Shri P.K. Bhatiya, Additional District Judge No.2, Jaipur City, Jaipur in Civil Suit No. 264/84.

Date of Judgment ::: September 18th **,2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. G.L. Sharma for the appellant
Mr. Kinshuk Jain for the respondent

BY THE COURT:

This appeal under Section 96 CPC by the defendant arises out of the judgment and decree dated 22.7.1987 passed by the learned Additional District Judge No.2, Jaipur City, Jaipur whereby the learned Judge has decreed the plaintiffs' suit for recovery of Rs. 39,844/-.

The plaintiff filed a suit against the defendant for recovery of a sum of Rs. 44620.25 with the allegations that defendant invited tenders for

construction of a culvert in village Bassi Sitarampura. The plaintiff put his offer for a sum of Rs. 86001/- which was 7.76% less than the scheduled rates of Public Works Department for the year 1976. The plaintiff's tender being the lowest was accepted by the defendant and accordingly work order dated 26.9.78 was handed over to the plaintiff. The plaintiff had to complete the construction work by 25.3.79 i.e. within six months from the date of receipt of work order. The defendant was required to hand over lay out to the plaintiff on the same day, but the defendant failed to do so and handed over the lay out to the plaintiff only on 20.2.79, which resulted in causing loss to the plaintiff. On 7.3.79, the defendant informed the plaintiff that the period of six months for completion of construction work would be reckoned from 20.2.79, the day on which lay out was handed over. Having received the lay out, the plaintiff immediately started construction work. While digging the road up to the depth of 4-5', having found that there were water pipe lines of one feet dia-meter, the plaintiff had no option but to got the work stopped because unless the pipe lines are removed, digging could not have been

completed. Ultimately, pipe lines could be removed on 30.5.79. and after removal of pipe lines, plaintiff completed digging work up to the depth of 23'. Thereafter electric pole of 33 KV again obstructed digging work and the plaintiff could not continue with the work. Ultimately, the plaintiff could start work on 12.7.79. According to the plaintiff, negligence on the part of defendant caused delay in the progress of construction work. The plaintiff further alleged that despite lapses on their part, the defendant vide its letter dated 6.8.79 blamed the plaintiff for slow progress of work and accordingly imposed a penalty of 1% and deducted Rs. 932/- from the plaintiff's bill, which the plaintiff is entitled to recover from the defedant. It was alleged that plaintiff was not bound to carry out the work beyond work order of Rs. 86001/-, but still he had carried out work to the tune of Rs. 1,79,725.98 till December, 1979. However, the defendant with held a sum of Rs. 24597/- out of the final bill. As per the allegations in the plaint, the defendant created such a situation where plaintiff was constraint to request for defendant to prepare final bill. The plaintiff alleged that during this period

there was enormous price hike in iron, cement and other materials. The defendant issued a notice dated 21.8.80 to the plaintiff, thereby imposing penalty of 10% and asking the plaintiff to carry out remaining work at his own risk and costs. With these allegations, the plaintiff filed the suit with the prayer that imposition of 1% penalty to the tune of Rs. 932/-, with-holding of a sum of Rs. 24597.25 as against the final running bill and with-holding of security deposit of Rs. 14135/- may be declared to be unjustified and illegal and claimed recovery of total sum of Rs. 39844.25 from the defendant along with interest of Rs. 4776/-, totaling to Rs.44620.25.

The defendant contested the suit by filing written statement and denied the averments made in the plaint, execept the averment that lay out was given to the plaintiff on 20.2.1979. It was, inter-alia, averred that plaintiff himself avoided the execution of work on one pretext or the other, inasmuch as he was not willing to execute the work in its entirety and that the plaintiff himself was responsible for breach of the contract.

On the basis of pleadings of the parties the trial

court framed issues and at the conclusion of trial, the trial court decreed the plaintiff's suit for Rs. 39,844.25. Hence the present appeal by the defendant.

I have heard learned counsel for the parties and gone through the impugned judgment. Admittedly, the work order was given to the plaintiff 26.9.1978. It is also not in dispute that defendant handed over lay out to the plaintiff only on 20.2.1979. DW1 Prakash Chand Bardia has also admitted delivery of lay out to the plaintiff on 20.2.79. Thus, this delay of 5 months in execution of work cannot be said to be on the part of plaintiff. When digging work was in progress the pipe lines which belonged to the Government created obstruction. Till this obstruction was removed the plaintiff could not proceed further. The defendant vide its letter dated 30.5.79, Ex.A/1 informed the plaintiff that pipe lines have been removed and now he should proceed with the work. That apart, DW1 Prakash Bardia has has admitted that defendant had to supply the cement and that delay in supply of cement obstructed progress of work. The witness has also admitted the letter Ex.30 which was addressed to the Public Health and Engineering Department stating that work was being

withheld for want of cement. The witness has admitted in categorical terms that the department alone was not responsible for delay, but plaintiff was equally responsible for such delay. The witness has also admitted that there existed RCC pole which too was got removed by the defendant. In the light of the evidence discussed above, it must be concluded that the plaintiff was not responsible for causing delay in execution of the work The trial court has also come to a finding that obstructions were beyond the control of both the parties and hence neither defendant nor plaintiff can be held responsible for delay and therefore, the penalty of 1% imposed on the plaintiff cannot be said to be justified.

So far as withholding of amount of Rs. 2459.25 as against the final bill and Rs. 14135 as against security deposit is concerned, the defendant has come with a plea that as per the agreement the plaintiff was required to complete the work of RCC and iron but he failed to carry out the same and therefore, in terms of clause 38 of the agreement, the defendant got completed the above work from some other contractor. However, the defendant has not been able to prove that as to how

much expenses it incurred in getting such work completed. The trial court on consideration of evidence has come to a conclusion that defendant has not been able to prove as to which work it got completed by other contractor, how much was the amount paid to him. It has also not been able to establish as to which of the work enumerated in the schedule was not carried out by the plaintiff and what was the agreement to this effect. Unless it is proved that defendant was compelled to get the work completed from other contractor, which was left out by the plaintiff and for that purpose the defendant had to pay Rs. 24597/- in excess of the amount which was to be paid to the plaintiff, the defendant cannot be held to be justified in deducting the amount of Rs. 24597/-. In my view the defendant has not been able to prove that it was required to pay Rs. 24597 in excess of the amount that was to be paid to be plaintiff.

The defendant has also not been able to state any thing about the amount of Rs. 14135 as against the security deposit, except that this amount has been adjusted towards costs and risk. Since the defendant has not stated any thing about of the loss alleged to

be suffered on account of breach of contract. Therefore, the plaintiff is also entitled to recover the amount of security deposit.

The trial court in view considered view has considered the evidence adduced by the respective parties in true perspective and has rightly decreed the plaintiff's suit and therefore, the impugned judgment and decree call for no interference.

In the result, this appeal has no merit and is accordingly dismissed. In the facts and circumstances of the case, the parties are left to bear their own costs.

(Khem Chand Sharma), J.

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